Supreme Court,
FILED
SEP 10 192
CHARLES ELMORE CR
CL

IN THE

Supreme Court of the United States

No. 347.

ROBERT L. HATCH,

Plaintiff,

against

MOROSCO HOLDING COMPANY, INC.,

Defendant.

JOHN MARTIN RIEHLE, as Receiver,

Petitioner on Appeal,

against

EDWARD MARGOLIES,

Claimant-Appellee.

BRIEF OF EDWARD MARGOLIES, CLAIMANT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

NATHAN BURKAN,
Solicitor for Edward Margolies, Appellee.

GALLO & ACKERMAN, Inc., 142 Liberty Street. 'Phones—Rector 7252-6.

TABLE OF CASES.

	PAGES
Constitution of U. S., Article IV, Sec. 1	6
Sec. 905, Revised Statute of U. S.	7
Last Chance Mining Co. vs. Tyler Co., 157 U. S., 683	8
Galpin vs. Page, Fed. Cas., 5206, page 1132	8
Kansas City vs. Morgan, 76 Fed., 429	8
U. S. vs. Eisenbeis, 112 Fed., 190	9
Strauss vs. American Pub. Ass'n, 201 Fed., 306	9
Commercial Elec. Supply Co. vs. Curtis, 288 Fed., 657	10
Manhattan Trust Co. vs. Chicago Elec. Traction Co., 188 Fed., 1006	10
Chinn vs. Foster-Milburn Co., 195 Fed., 158	11
Glencove Granite Co. vs. City Trust, 118 Fed., 386	11
Cromwell vs. Sac Co., 94 U. S., 351	11
David Bradley Co. vs. Eagle Mfg. Co., 58 Fed., 721	12, 28
Clay vs. Deskins, 63 Fed., 330	13
Stearns vs. Lawrence, 83 Fed., 738	13
Susquehanna Coal Co. vs. The Mayor, 184 Fed., 943	14
American Ass'n vs. Hurst, 59 Fed., 1	14
High on Receivers, 4th Edition, Sec. 318	21
Bank of Bethel vs. Pahquioque Bank, 81 U. S., 383	21
Calhoun vs. Lanaux, 127 U. S., 634	22
Butler vs. Eaton, 141 U. S., 240	22
Lyon Binding Co. vs. Karatz, 262 U. S., 77	22
Pine Lake Iron Co. vs. Lafayette, 53 Fed., 853	24, 28
Pringle vs. Woolworth, 90 N. Y., 502	24
Nicholas vs. Lord, 193 N. Y., 383	25
Davis vs. Gray, 16 Wall., 203	26
Atlantic Trust Co. vs. Chapman, 208 U. S., 360	27
Central Nat'l Bank vs. Stevens, 169 U. S., 432	14

PAGE

Riggs vs. Johnson County, 6 Wall., 166 15
Amy vs. Superisson, 11 Wall., 136 15
Mills vs. Provident Life, 100 Fed., 344 16
Sargent vs. Hilton, 115 U. S., 348 16
Piedmont Co. vs. Halstead, 294 Fed., 247 17
Dillingham vs. Hawk, 60 Fed., 494 17
Texas & Pac. Ry. vs. Johnson, 151 U. S., 81 18
Central Trust Co. vs. St. Louis Ry. Co., 41 Fed., 551 19
Essanay Film Co. vs. Karel, 258 U. S., 358 20
Wilcox vs. Jones, 177 Fed., 870 19
Rooker vs. Fidelity Trust Co., 263 U. S., 413 20
Hatch vs. Morosco, 19 Fed. (2), 766 29
Hatch vs. Morosco, 5 Fed. (2), 1015 29

Supreme Court of the United States

No. 347.

ROBERT L. HATCH,
Plaintiff,
against
MOROSCO HOLDING COMPANY, INC.,
Defendant.

JOHN MARTIN RIEHLE, as Receiver,
Petitioner on Appeal,
against
EDWARD MARGOLIES,
Claimant-Appellee.

BRIEF OF EDWARD MARGOLIES, CLAIMANT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of Facts.

The petitioner seeks to review the decision of the Circuit Court of Appeals, which confirmed the report of the Special Master in an equity receivership, and allowed

the claim of Edward Margolies as a creditor, in the sum of $55,101.41.

The issue is a very simple one, and may be summarized briefly as follows:

Must the United States District Court, after it has appointed a receiver in equity of a corporation, recognize a judgment rendered in a state court in favor of a creditor of the corporation, where the state court action had been commenced prior to the federal court receivership proceedings?

That is all which is involved in this protracted litigation.

The petitioner, the receiver, complains that he was deprived of the right to contest de novo the merits of Margolies' claim against the corporation, and that he was compelled to accept as conclusive and binding a judgment in the aforesaid sum.

Margolies claims that since he brought his action in the state court for money damages, before any proceedings were commenced in the federal court, the latter court is bound to recognize his judgment as conclusive and the receiver could not litigate de novo the merits of Margolies' claim.

The appellant, Edward Margolies, is a builder and contractor; he has built many theatres in New York City and elsewhere (fol. 216).

He entered into a contract with the defendant, Morosco Holding Company, Inc., in which he undertook to erect a theatre for the defendant in Titusville, Pennsylvania, the cost to defendant not to exceed $172,000 (Complaint, fols. 111-112; Findings, fols. 217, 218).

Installment payments which were to become due on requisitions of the architect, were not made by the defendant, and on May 16th, 1923, appellant brought suit against the defendant in the Supreme Court of New York, Queens County, for accrued installments, as well as

profits that he would have earned, and prayed for judgment in the sum of $124,381.00 (fol. 122).

On May 18th, 1923, the summons and complaint in such suit were personally served in the Borough of Manhattan, City of New York, upon the defendant, copies thereof being left with George R. Bentel, its Vice-President (Affidavit of Service, fols. 127-128).

The defendant appeared in the action by Myron Sulzberger, its attorney, whose post-office address is 565 Fifth Avenue, Manhattan, New York City, and interposed an answer in said suit, which answer was verified June 13th, 1923 (Answer, fols. 178 to 192).

The answer contained a counterclaim against the appellant for $150,000.00 for alleged breach of contract and the defendant demanded judgment against the appellant on such counterclaim (fols. 184-188).

The claimant thereupon served a reply (fols. 193-201), and on June 22nd, 1923, he served upon the defendant's attorney a notice of trial for the October, 1923, term (fol. 130). Admission of service of that notice of trial was signed by defendant's attorney, Mr. Sulzberger (fol. 133).

There is no dispute about these facts, and it is manifest that the State Court had full jurisdiction over the defendant in that suit.

Thereafter, and on July 23rd, 1923, the plaintiff in this action, Robert L. Hatch, claiming to be a creditor of the defendant, filed a Bill in Equity in the United States District Court, for the Southern District of New York, against this defendant, praying for the appointment of a Receiver (Bill of Complaint, fol. 1; fol. 27).

On the same day, this defendant filed an answer, admitting the allegations of the complaint and likewise praying for the appointment of a Receiver (Answer, fol. 37.)

Thereupon John Martin Riehle, Esq., petitioner herein, was appointed receiver by District Judge Winslow.

The receiver herein obtained orders restraining Margolies from prosecuting his suit in the State Courts. Thereupon Margolies moved in the District Court that the orders in so far as they restrained him from prosecuting his suit be vacated. That court denied the motion, and Margolies appealed to the Circuit Court of Appeals.

That court reversed the District Court (5 Fed., 2d, 1015), and held that the stays were improperly made. It held, however, that the judgment, when obtained, would not be conclusive and binding on the receiver.

During all this time, the receiver was attempting to get rid of this claimant as a creditor, and he attempted to bring on before a Special Master appointed by the District Court a hearing with respect to Margolies' claim.

Margolies had up to that time filed no claim in the District Court, and had never recognized the right of the District Court to litigate his claim.

He was in the State Court and he was anxious to prosecute his suit to judgment in that court. He served notice of his intention on the receiver after the stay was vacated, but the receiver made no attempt to defend in the State Court nor to obtain a judgment on his counterclaim.

Thereupon Margolies obtained a judgment in the State Court against the Morosco Holding Company, Inc., for $55,283.88.

The receiver had defaulted in the State Court.

The judgment was obtained on May 16, 1925; on May 26, 1925, Margolies, for the first time, appeared and verified his proof of claim against the Morosco Holding Company, Inc.

He was permitted by an order of Judge Winslow to file his claim with the receiver, and upon objections being made to the claim, a hearing was held before the Special Master, Bern Budd, Esq.

Margolies offered in evidence an exemplified copy of his judgment. The receiver elected to try the claim de novo. This Margolies refused to do, stating that he relied on his judgment as a complete adjudication of his claim and of the amount due to him.

Thereupon the Special Master dismissed the claim. The District Court affirmed the proceedings. An appeal was taken to the Circuit Court of Appeals, and that court, in its opinion written by Judge Swan, stated (19 Fed., 2d, 766, at p. 769):

> "For the reasons above stated, we believe the direction in our former mandate to the effect that any judgment which the appellant might obtain in his action in the state court should not affect the right of the receiver to contest the claim de novo was improvidently made."

In its decision that court upheld the contention of Margolies that his judgment in the State Court was a complete adjudication of the amount of his claim, but it made on modification only, and that was with respect to the interest, and it held that the District Court had exclusive right to award the proper amount of interest.

It remanded the proceedings to the District Court and thereupon the District Court made an order on July 12, 1927 (fol. 91), permitting Margolies to prove his claim against the receiver, and directing the Special Master to receive in evidence an exemplified copy of the judgment in the State Court (fol. 96) "as conclusive proof of the claimant's claim against said receiver," but it directed the Special Master to deduct from such judgment the interest and to allow in lieu thereof interest from the date when the exemplified copy of the judgment was first offered in evidence, to wit, December 14, 1925.

In accordance with this order, a hearing was held be-

fore the Special Master, who received in evidence the exemplified copy of the judgment.

The face amount of the judgment was $49,596.23. The Special Master awarded interest on that amount from December 14, 1925, in accordance with the order of the District Court, which interest amounted to $5,505.18, making the total amount $55,101.41 (fol. 77).

A motion was made to confirm the report, and such report was confirmed by order of the District Court dated October 20, 1927 (fol. 98), and the claim of Margolies was allowed in said amount of $55,101.41 (fol. 102).

From the order of the District Court of July 12, 1927, and from the order confirming the report of the Special Master of October 20, 1927, the receiver appealed to the Circuit Court of Appeals.

That court, on May 7, 1928, handed down a Per Curiam opinion affirming the order appealed from (fols. 346-348). The petitioner now seeks a writ of certiorari.

I.

Margolies' claim, having been reduced to judgment in the State Court, the District Court, as well as the Special Master appointed by that Court, and the Receiver, were bound to give full faith and credit to such judgment, and the judgment was admissible in evidence as proof of the appellant's claim.

The Constitution of the United States provides in Article IV, Section 1, as follows:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such

acts, records and proceedings shall be proved and the effect thereof."

Pursuant to that section of the Constitution there was enacted Revised Statute, Section 905, which was later re-enacted into Section 905 of the Revised Statutes. That section is as follows:

"AUTHENTICATION OF LEGISLATIVE ACTS AND PROOF OF JUDICIAL PROCEEDINGS OF STATE, ETC.

"The acts of the legislature of any state or territory or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate that the said attestation is in due form * * *. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

The judgment which was offered in evidence by the appellant was duly exemplified as required by the foregoing statute. It was attested by the clerk (fol. 282), under seal of the court (fol. 282) and there was attached thereto, a certificate of the presiding Justice of the Appellate Division of the Second Department (fols. 284,

285), to the effect that the attestation of the judgment was in due form of law and by the proper officer (fol. 285).

There is no doubt that a judgment by default is as conclusive as a judgment recovered after a contest.

> Last Chance Mining Co. vs. Tyler Co., 157 U. S., 683, 691.

The courts have construed the foregoing article of the Constitution and statute as giving the same conclusive effect to a judgment of a state court in an action in a federal court, sitting in the same state, as would be given to it in the courts of another state.

In Galpin vs. Page, Fed. Cases, 5206, Justice Field said at page 1132:

> "The act of Congress goes perhaps further than the constitutional requirement which relates to the faith and credit to be given in each state to the public acts, records and judicial proceedings of every other state inasmuch as it declares the effect of the records and judicial proceedings of the states when authenticated as provided 'in every court within the United States,' thus making its provisions applicable to the national courts as well as to the courts of the states. The power of Congress to prescribe the manner in which the records of the states shall be proved in the national courts, and the effect which shall be given to them, is independent of the constitutional provision. Still the law is to have the same construction in its application to the national courts as to the state courts."

In Kansas City vs. Morgan, 76 Fed., 429, the court, quoting from the leading case of Pennoyer vs. Neff, 95 U. S., 714, said at page 437:

> "Whilst they (the federal courts) are not foreign tribunals, in their relations to the state courts, they are tribunals of a different sovereignty, exercising a distinct and independent jurisdiction, and are bound to give the judgments of the state courts only the same faith and credit which the courts of another state are bound to give to them."

And in United States vs. Eisenbeis, 112 Fed., 190, the Circuit Court of Appeals for the Ninth Circuit, said at page 195:

> "When the final judgment of a state court is offered in evidence in a suit or proceeding in a court of the United States, its validity cannot be questioned for errors which do not affect the jurisdiction of the court which rendered it."

In Strauss vs. American Publishers Assn., 201 Fed., 306, the plaintiff, having obtained a judgment in the state court for an infringement of common law rights in literary property, subsequently sought to maintain a suit in the federal court for copyright infringement. Circuit Judge Ward held, at page 310:

> "The plaintiffs, having the option to go into either court, chose the state court, and their claim, having been there adjudicated, cannot be presented the second time to any other court. Clabaugh vs. Southern Wholesale Grocers Association (C. C.), 181 Fed., 706. It may be admitted that the state court erroneously held, in view of the subsequent decision of the Supreme Court in Bobbs-Merrill Co. vs. Straus, 210 U. S., 339, 28 Sup. Ct., 722, 52 L. Ed., 1086, that the agreements complained of were valid so far as copyrighted books were concerned, and that

> therefore as a matter of law the plaintiffs could not recover damages in respect to them at any time. Still this question was actually involved in the cause before the state court, which was competent to decide it. Having done so, its judgment is binding in any subsequent action between the same parties for all times. Cromwell vs. Sac County, 94 U. S., 351, 24 L. Ed., 195. If the plaintiffs are entitled to any relief, they can obtain it only in the original action."

In Commercial Electrical Supply Co. vs. Curtis, 288 Fed., 657, Circuit Judge Sanborn of the Eighth Circuit, said at page 660:

> "A final decree or judgment of a court between parties to a suit therein, of whom and concerning the subject-matter of which it has jurisdiction, renders not only every claim and defense which they made and obtained a decision of, but also every claim and defense that they might have made and that the court might have decided in that suit, *res judicata* between them."

In Strauss vs. American Publishers Assn., supra, it was held that the fact that there was an appeal pending from the judgment, did not suspend its operation as an estoppel.

In Manhattan Trust Co. vs. Chicago Electric Traction Co., 188 Fed., 1006, Judge Kohlsaat held that a suit in a state court against a federal court receiver, in which the plaintiff's claim was reduced to judgment, was conclusive and binding in a federal court as to the receiver. He said, that inasmuch as the statute permitted a federal receiver to be sued in a state court, it would be a very useless act to give such permission if the judgment so obtained would not have a binding and conclusive effect in the receivership proceedings (p. 1010).

In Chinn vs. Foster-Milburn Co., 195 Fed., 158, the defendant, sued in the District Court for the Western District of New York, on a judgment which had been obtained against it in the State Court of Kentucky, interposed a plea that the State Court had been without jurisdiction, because the summons in that action had not been served upon the defendant in Kentucky. It was shown, however, that the defendant, after having sought unsuccessfully to quash the service of the summons in the State Court action, had interposed its answer and gone to trial. Judge Hazel held that the question of jurisdiction had been decided against the defendant in the State Court, and that the judgment, being a valid judgment against it in Kentucky, must be given full faith and credit in the Federal Court. He said (p. 163):

> "* * * by answering to the merits and appealing from the judgment to the Court of Appeals of Kentucky, the defendant submitted to the jurisdiction, and is now estopped from questioning the validity of the judgment."

In Glencove Granite Co. vs. City Trust, 118 Fed., 386, the Circuit Court of Appeals for the Third Circuit, quoted from the earlier decision in Cromwell vs. Sac Co. (94 U. S., 351, at 352), as follows (at p. 389):

> "In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

In David Bradley Mfg. Co. vs. Eagle Mfg. Co., 58 Fed., 721, the court said at page 722:

> "Irrespective, however, of any question of pleading, we are of opinion that the former decree was properly before the court, and should be given full effect. The issue involved in this case was novelty of the invention claimed. The former decree was, as has been said, stipulated in evidence by the agreement of the parties, subject only to its materiality. A former decree may be good as a plea in bar, or may be available as evidence. It was said in the Duchess of Kingston's Case, 11 State Tr., 261, 2 Smith, Lead. Cas. (6th Amer. Ed.), 663, that such decree is 'as a plea, a bar, or as evidence, conclusive.' It may, perhaps, be somewhat questionable whether it is correct to say that a party is estopped by a judgment, any more than that he is estopped by a contract. The former decree is not the act of the party, but the solemn adjudication of a judicial tribunal. So far as the party is concerned, he may be permitted to waive the former recovery in his own behalf; but the peace and good order of society are likewise concerned, that there shall be an end to litigation, and that the courts should not be twice vexed with the same controversy, when that controversy has once been solemnly adjudicated. Marsh vs. Pier, 4 Rawle, 288; Kilheffer vs. Herr, 17 Serg. & R., 319.
>
> "However that may be, it is certainly true that, without respect to pleading, wherever a former recovery is properly in evidence—as here it was by agreement of the parties—full effect should be given to it, so far as it bears upon the issue presented. The issue here being novelty of invention, and that fact having been determined by the prior adjudica-

tion, the former decree becomes conclusive evidence of the validity of the patent as between the parties affected by such prior adjudication."

In Clay vs. Deskins, 63 Fed., 330, it was held that, where a state court had decided that the complainants had lost their rights under a contract for the sale of lands, the federal court, in a subsequent suit brought by the same complainants against the defendant, was bound by the prior judgment. Circuit Judge Simonton, writing for the Circuit Court of Appeals of the Fourth Circuit, said at page 332:

> "The supreme court of West Virginia, in a cause between the same parties, relating to the same subject-matter as the suit in the circuit court, has determined that these complainants have lost all rights they may have had under the contract of sale, and that they did not have such an interest in these lands at the date of the sale by the commissioner, Shumate, to W. H. Deskins, as would authorize them to question in a court of equity the validity of the sale. This question is therefore res adjudicata. * * * The decision of the case in the state courts of West Virginia made the matter res adjudicata. Aurora City vs. West, 7 Wall., at page 96. Where the parties are the same, the legal effect of the former judgment is not impaired because the subject of the second suit is different, provided the second suit involves the same title and depends on the same question."

In Stearns vs. Lawrence, 83 Fed., 738, decided by Circuit Judges Taft and Linton and District Judge Charles D. Clark, it was held:

> "A finding made in an action against a bank and its president that the president purchased certain

notes for the bank with knowledge of the condition on which they were given, is conclusive of such fact in a suit brought by a receiver subsequently appointed for the bank to charge the president with losses resulting from his negligent management" (syllabus).

See also:

Susquehanna Coal Co. vs. The Mayor, 184 Fed., 943.

As pointed out subsequently, the statutes which regulate comity are so important that they must be liberally construed.

Harrison vs. Hurst, 59 Fed. 1, 5.

Supreme Court Advance Opinions 72 L.Ed. page 322

II.

To refuse to recognize the validity of the judgment of the State Court and its conclusiveness upon the Receiver would be in effect a denial of the jurisdiction of the State Court and nullification of the proceedings in that Court.

Jurisdiction is the power not only to try, but to determine by a valid judgment the issues presented to the Court and to enforce the judgment.

In *Central National Bank* vs. *Stevens*, 169 U. S., 432, 464, it was said:

> "But it has been frequently determined by this Court that the jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until the judgment shall be satisfied."

Thus it was said in *Riggs* vs. *Johnson County*, 6 Wall., 166, that (at p. 187): "Process subsequent to judgment is as essential to jurisdiction as process antecedent, else the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution."

And in *Amy* vs. *Superisson*, 11 Wall., 136, it was said:

> "• • • the two sets of tribunals—state and national—are as independent as they are separate. Neither can impede or arrest any action the other may take, within the limits of its jurisdiction, for the satisfaction of its judgments and decrees."
>
> "An execution is the end of the law. It gives the successful party the fruits of his judgment." *United States* vs. *Nourse*, 9 Pet., 8, 28.

But it is scarcely necessary to quote authorities to show that to deprive a court of the power to execute its decrees is to essentially impair its jurisdiction.

It was held by the Circuit Court that the District Court was prohibited by Section 265 of the Judicial Code from enjoining the prosecution of the action brought in the State Court by Margolies against the Morosco Holding Company.

This was a recognition of the jurisdiction previously obtained by the State Court over the parties to said action and over the cause of action.

If the State Court had jurisdiction, it had the power to render a valid judgment and to issue process for the enforcement of its judgment.

It has been held that the proceedings of a State Court, which, under Section 165 of the Judicial Code (former Section 720 of the Revised Statutes) shall not be enjoined by any United States Court, include the judgment and the execution issued thereon.

In *Mills* vs. *Provident Life & Trust Co.*, 100 Fed., 344, 346, the Court said:

> "That the levy and sale under an execution issued upon a judgment rendered by a state court is a 'proceeding in the state court within the meaning of this provision of the Revised Statutes, does not, we think, admit of doubt.' "

In *Sargent* vs. *Hilton*, 115 U. S., 348, the same provision was under consideration and it was held that by said provision the Circuit Court was deprived of power to enjoin the sale of lands by a Sheriff under a judgment of a State Court, unless the injunction was authorized by the law relating to proceedings in bankruptcy.

The same view was taken by the Circuit Court of Appeals for the Sixth Circuit in *American Assn.* vs. *Hurst*, 59 Fed., 1, which was decided by Judges Taft and Lurton, and District Judge Severens. Judge Taft writing for the Court, after pointing out the distinction between process directed against any and all property of an individual to satisfy a judgment or order of attachment, said at page 5:

> "In the light of this distinction, it is clear that the act, however tortious, of an executive officer of a court, done under color of its process, is to be regarded as a 'proceeding' of that court, which comity and public policy require courts of concurrent jurisdiction not to interfere with by injunctive or dispossessory process. If this be the rule of comity and public policy in the absence of a statute, it is conclusive in determining the true construction of Section 720, Rev. St., and the meaning of the words used therein, 'proceedings in any court of the state.' That section was passed, not to preserve comity and har-

> monious action between courts of the same sovereign exercising concurrent jurisdiction, but to attain such an end, and prevent unseemly conflict between courts of different sovereigns exercising concurrent jurisdiction over the same territory. *The purpose of the statute is so important that a liberal construction should be given to accomplish it.*"

The same view was taken by the Circuit Court of Appeals for the Third Circuit Court, in the recent decision in *Piedmont Coal Co.* vs. *Hustead*, 294 Fed., 247, 254.

It is true that in the case at bar the property of the judgment debtor was taken into the custody of the United States District Court and its receiver before the appellant recovered his judgment in the State Court, and that, therefore, an execution issued under the judgment could not be levied on the same property.

But that fact does not affect the validity and conclusiveness of the judgment. If the Receiver could refuse to recognize the validity of the judgment, the same result would be accomplished as if proceedings in the State Court had been enjoined.

Section 720 of the Revised Statutes, was enacted, as Judge Taft pointed out in *American Assn.* vs. *Hurst*, supra, to effectuate an important public policy, the same public policy which requires the United States courts to give full faith and credit to the judicial proceedings in each State.

A construction of the law which recognizes the right of a litigant in a State Court to prosecute his remedies free from interference by the national courts, and in the same breath would proclaim that any judgment obtained in the State Court shall be worthless in the national court, destroys that public policy.

In *Dillingham* vs. *Hauk*, 60 Fed., 494, the Circuit Court of Appeals for the Fifth Circuit construed the act of

March 7, 1887 (now Section 66 of the Judicial Code), which permits a receiver appointed by a federal court to be sued in a State Court without leave of the Court that appointed him, but adds that such suits shall be under the general equity jurisdiction of the appointing court. It was held that such supervisory power did not authorize the court appointing the receiver to deny the validity of the judgment; that the time when and the manner in which a judgment against a receiver shall be paid, the adjustment of equities between the several claimants against the property in the hands of the receiver and the just distribution of the funds according to the rights of the several parties interested in it must be subject to the general equity jurisdiction of the Court.

But, it was said at page 497 (italics ours):

> "• • • the right to sue the receiver in the state court would be of little utility if its judgment could be annulled or modified at the discretion of this (federal) court, to which it is presented as a claim against the fund or property in the hands of the receiver. The judgment of the state court is conclusive as to the existence and amount of the appellee's claim, but the time and manner of its payment must be controlled by the court appointing the receiver. *A judgment may be complete and perfect, and have full effect, independent of the right to issue execution*" (citing Justice Story's decision in Mills vs. Duryee, 7 Cranch, 481).

The United States Supreme Court, discussing the same statute, in *Texas & Pacific Ry.* vs. *Johnson*, 151 U. S., 81, at page 103, said:

> "• • • the right to sue without resorting to the appointing court, which involves the right to obtain

> judgment, cannot be assumed to have been practically valueless by the further provision in the same section of the statute which granted it."

As a further reason why United States District Courts cannot be allowed to nullify or modify the judgments of State Courts, it has been frequently pointed out that to do so would amount to the exercise of appellate jurisdiction.

In *Central Trust Co.* vs. *St. Louis, A. & T. Ry. Co.*, 41 Fed., 551, the Circuit Judge directed the receivers of a corporation appointed by the Circuit Court to allow, as of course, judgments obtained in State Courts against the receivers as well as against the corporation as adjudicated claims. The Court was asked to qualify the order as to judgments by a provision that when a judgment was shown to be for a grossly excessive amount, the Court would reduce it to a reasonable sum. As to this request, the Court said, at page 555:

> "The state court has jurisdiction of the parties and of the subject-matter and its judgment against the receiver of this court is as final and conclusive as it is against any other suitor. The right to sue the receiver in the state court would be of little utility, if its judgment could be annulled or modified at the discretion of this court. It is open to the receiver to correct the errors of the inferior courts of the state by an appeal to the Supreme Court. But this court is not invested with appellate or supervisory jurisdiction over the state courts and cannot annul, vacate or modify their judgments."

The above decision was approved by the Circuit Court of Appeals for the Fourth Circuit in *Wilcox* vs. *Jones*, 177 Fed., 870, 874.

In *Rooker* vs. *Fidelity Trust Co.*, 263 U. S., 413, the United States Supreme Court said, at page 416:

> "Under the legislation of Congress no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment (of the State Court) for errors of that character. To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original."

In Essanay Film Co. vs. Kane, 258 U. S., 358, 361, it was said:

> "That appellant's objection to the action sought to be restrained rests upon a fundamental ground and one based upon a provision of the Constitution of the United States, does not render the effort to stay proceedings in the state court any the less inconsistent with §265, Judicial Code. That section would be of little force did it not apply to cases where, save for its prohibition, good ground would exist for enjoining the prosecution of a pending suit. And, as to the federal question involved, Congress at all times, commencing with the first Judiciary Act (September 24, 1789, c. 20, §25, 1 Stat., 73, 85), has maintained upon the statute book such provisions as it deemed needful for reviewing judicial proceedings in the state courts involving a denial of federal rights, but has confined them to a direct review by this court, and deferred this until final judgment or decree in the state court of last resort. At the same time, since 1793, the prohibition of the use of injunction from a federal court to stay proceedings in a state court has been maintained continuously, and has been consistently upheld. Hull vs. Burr, 234 U. S., 712, 723, and cases cited."

III.

The Receiver was bound to recognize the validity of the appellant's claim, even though that claim had been adjudicated in a State Court.

High, in his work "On Receivers," 4th edition, says in §318, page 399:

> "And an action, pending against a corporation at the date of a receivership may proceed to judgment against the corporation, and such judgment will be conclusive against the Receiver of the amount of plaintiff's demand."

In Bank of Bethel vs. Pahquioque Bank, 81 U. S., 383, the court said at page 401:

> "Enough has already been remarked to show that the fourth proposition of the defendants cannot be sustained, as the act of Congress provides that the receiver, in making the basis for a dividend, shall include in the list not only claims proved before him to his satisfaction, *but claims also adjudicated in a court of competent jurisdiction.*
>
> "Attempt is made to show that the adjudicated claims there referred to are only such as had been adjudicated before the receiver was appointed, but the court is of the opinion that such a construction is not warranted either by the language employed, or the subject-matter to which it relates, or the purpose to be accomplished, or by the analogies of the law or the usual rules of interpretation which courts apply in ascertaining the meaning of a legislative provision of a remedial character. Tested by any one or all of these criterions the court is of the

opinion that the construction assumed by the defendants is quite too narrow to carry into effect the intention which the framers of the provision had in view at the time it was adopted. Claims presented by creditors may be proved before the receiver, or they may be put in suit in any court of competent jurisdiction, as a means of establishing their validity and to determine the amount owed by the association, but the judgment when recovered will not give the creditor any lien on the property of the delinquent association, nor secure to the judgment-creditor any preference over other creditors whose claims are proven before the receiver. All alike must await the action of the Comptroller of the Currency, and be content with a just and legal distribution of the proceeds of the assets collected by the receiver and liquidated by the comptroller according to the act of Congress in such case made and provided."

In Calhoun vs. Lanaux, 127 U. S., 634, 639, it was held that this rule was not confined to national banks, but applied still more aptly to other corporations. The court said at page 639:

"In the case of Bank of Bethel vs. Pahquioque Bank, 4 Wall., 383, we decided that suit might be brought in a state court against a national bank, although it had made default in paying its circulating notes and a receiver of a bank had been appointed by the comptroller of the currency. A fortiori, a company may be sued whose assets have been placed in the hands of a receiver in an ordinary suit in chancery."

In Butler vs. Eaton, 141 U. S., 240, the receiver of a national bank sued a stockholder for the amount of a

subscription for new stock. The defendant offered as a bar evidence of a judgment obtained by her in a State Court determining that there was no valid subscription. Such judgment was admitted in evidence in the U. S. Circuit Court and a decision was rendered against the Receiver. The U. S. Supreme Court held, at page 242:

> "At that time this judgment was valid and subsisting. It was not nominally between the same parties, it is true. It was a judgment recovered by May J. Eaton against the Pacific National Bank; whereas the present action is an action between Butler, the receiver of the said bank, and the said Mary J. Eaton. We are inclined to think, however, that the court below was right in determining that the two actions were substantially between the same parties, inasmuch as a receiver of a national bank, in all actions and suits growing out of the transactions of the bank, represents it as fully as an executor represents his testator. We think, therefore, that the evidence of the judgment recovered was properly admitted as a bar to the receiver's title to recover in reference to the new stock."

In Lyon Binding Co. vs. Karatz, 262 U. S., 77, the question was as to the power of the federal court to disregard a judgment of the state court of Nebraska, which had taken hold of certain properties as to which a receiver in the federal court asserted claims.

Mr. Justice Brandies said at page 90:

> "But the judgment of the State Court, which had possession of the *res*, could not be set aside by a collateral attack in the Federal Courts * * *. Nor could it be ignored * * *. Lower Federal Courts are not superior to State Courts."

The case of Pine Lake Iron Co. vs. Lafayette, 53 Fed., 853, is on all fours with the instant case. There, a receiver had been appointed for the defendant in the federal court. The intervenor had commenced an action against the defendant in the New York State Court prior to the receivership. While the Special Master appointed by the federal court was taking proofs of claim, the intervenor recovered his judgment in the New York State Court, and he then asked leave of the Master to put in evidence a transcript of his judgment, claiming that it was conclusive evidence of the amount of his claim.

The Master held that it was neither conclusive, nor prima facie evidence, and upon the merits of the claim reported against the petitioner or intervenor. The courts said at page 853:

> "The authorities cited on the subject recognize the right of one who has commenced a suit before the appointment of a receiver of the debtor's property, to prosecute the action to judgment, and that a judgment so obtained establishes as against the receiver, the rightful amount of the demand."

The court then allowed the petitioner's claim based upon the judgment which he had obtained in the state court.

In a leading case in New York State,—Pringle vs. Woolworth, 90 N. Y., 502, it was held that a judgment obtained in a court against an insurance company in Pennsylvania was binding and conclusive upon the receiver of that insurance company in the State of New York, and recovery was permitted in a second suit brought on the judgment against the receiver.

Chief Justice Andrews said (p. 511):

"The case is analogous to that of a suit brought against a debtor for the recovery of a debt, after a general assignment of his property made to a trustee for the benefit of creditors. The contract between the debtor and creditor would still subsist, and could be enforced by suit against the debtor, and a judgment between the original parties on the contract would necessarily establish the existence and extent of the obligation between them, as well as against a trustee of his estate for the benefit of creditors. Whether it would give a priority in respect to payment of the claim, is another and quite independent question. And in this case the judgment against the company, established as against the receiver the amount of the debt or claim of the plaintiff upon the policy, and the receiver had no right to reagitate questions litigated in the action against the company, or to interpose any defense on the merits which might have been taken in the action in which the judgment was rendered. The receiver holds the property and estate of the corporation as the officer of the court, for the purpose of distribution under the direction of the court among creditors and stockholders, and in the absence of fraud or collusion, neither of which is alleged in respect to the Pennsylvania judgment, the receiver and the other creditors are bound thereby. If any reason existed to question the judgment against the company, it was the duty of the receiver to have applied to the court rendering it, to reopen the judgment, and to be permitted to defend."

That case has always been referred to as leading authority and was cited and relied upon by the Court of Appeals in the later case of Nicholas vs. Lord, 193 N. Y., 388, 395.

IV.

The fact that Margolies' claim was not formally filed with the Receiver until it had been reduced to judgment, did not affect the conclusiveness and binding force of the judgment.

Until Margolies had obtained his judgment, his claim was unliquidated. The Receiver knew all about the claim. There is no pretense on his part that he was ignorant of the fact that appellant had a claim for a substantial amount by reason of the breach of his building contract with the Morosco Holding Co., Inc. The Receiver had full knowledge of the pendency of the suit and the Receiver had succeeded in improperly staying that suit for a period of over a year.

Moreover, Margolies obtained leave from Judge Winslow to file his claim by order dated November 27, 1925, and pursuant to that order the claim was filed on November 30, 1925. Petitioner admits that such an order was made (Petition, p. 4). The Receiver cannot here attack the validity of the order which permitted Margolies to file his claim. Since the claim was duly filed pursuant to the order, the Receiver was bound to accept it as a claim. It was the affirmative duty of the Receiver to receive legitimate claims against the estate. The Receiver owes a duty to creditors as well as to a defendant.

It was said of a receiver in Davis vs. Gray, 16 Wall., 203, at page 217:

> "A receiver is appointed upon a principle of justice for the benefit of all concerned * * *. He is virtually a representative of the court and of all the parties in interest in the litigation wherein he is appointed * * *. He is not appointed for the benefit of either of the parties, but of all concerned."

In Atlantic Trust Co. vs. Chapman, 208 U. S., 360, Mr. Justice Harlan said (p. 370):

"Immediately upon such appointment and after the qualification of the receiver, the property passed into the custody of the law, and thenceforward its administration was wholly under the control of the court by its officer or creature, the receiver. In Booth vs. Clark, 17 How., 322, 331, it was said: 'A receiver is an indifferent person between parties, appointed by the court to receive the rents, issues or profits of land, or other thing in question in this court, pending the suit, where it does not seem reasonable to the court that either party should do it. Wyatt's Prac. Reg., 355. He is an officer of the court; his appointment is provisional. *He is appointed in behalf of all parties, and not of the complainant or of the defendant only. He is appointed for the benefit of all parties who may establish rights in the cause. The money in his hands is in custodia legis for whoever can make out a title to it.* Delaney vs. Mansfield, 1 Hogan, 234. It is the court itself which has the care of the property in dispute. The Receiver is but the creature of the court; he has no powers except such as are conferred upon him by the order of his appointment and the course and practice of the court. Verplanck vs. Mercantile Insurance Company, 2 Paige, C. R., 452.' In Porter vs. Sabin, 149 U. S., 473, 479, the court said: 'When a court exercising jurisdiction in equity appoints a receiver of all the property of a corporation, the court assumes the administration of the estate; the possession of the receiver is the possession of the court; and the court itself holds and administers the estate, through the receiver as its officer, for the benefit of those whom the court shall ultimately adjudge to be entitled to it.'"

Under these circumstances, the Receiver cannot urge laches in filing the claim.

In the case of Pine Lake Iron Co. vs. Lafayette, 53 Fed., 853, the point was made that the petitioner therein had been precluded from filing his claim (in that case, also in the form of a judgment of a state court), because the judgment was obtained after the time set for filing it.

The court held that filing the claim after judgment was not fatal. It said at page 854:

> "He (petitioner) could not present the judgment because that had not been rendered. He might of course have made reference to the suit; but his failure to do so, in view of the admitted fact that the receiver and his counsel had knowledge of the pendency of the suit, was not a waiver of the right to prosecute the action."

In David Bradley Mfg. Co. vs. Eagle Mfg. Co., 57 Fed., 980, the Circuit Court of Appeals for the Seventh Circuit said at page 985:

> "That the decree was interlocutory at the bringing of this suit, and subsequently ripened into a final decree, does not impair its efficacy or conclusiveness when properly presented in this suit. The relative time of institution of suit, or the relative date of final decree, is not of consequence if the merits of the controversy be thereby fully and finally determined, and the record thereof is properly brought to the attention of the court."

V.

The decision of the Circuit Court in Hatch vs. Morosco Holding Company, Inc., reported in 19 Fed., 2d, 766, is correct and should not be disturbed.

The careful consideration which the appeal received is reflected in the able opinion of Judge Swan, particularly in view of the fact that the court was at that time reversing its prior ruling (5 Fed., 2d, 1015), with respect to the conclusiveness and binding effect of the State Court judgment.

On appeal in 5 Fed., 2d, 1015, where this court held that the stays granted against the prosecution of the State Court action were improper, the question of the validity and conclusiveness of the State Court judgment was not involved, because the suit in the State Court had not yet gone to judgment.

The petitioner argues that the force and effect of the decision of the Circuit Court is to interfere with the proper administration of the assets in the receivership proceeding.

Of course, that is not so. All that was decided was that the State Court judgment was binding and conclusive upon the receiver, and that an exemplified copy thereof was sufficient to establish Margolies' claim and his status as a creditor in the estate.

The Circuit Court did not give Margolies the right to do anything that would interfere with the status of the receivership. Margolies asked for no such privilege.

Margolies made no attempt to issue any execution nor to interfere with the administration of the assets now in the hands of the receiver. Consequently, the involved argument of the receiver, in which he seeks to distinguish between a claim in personam and a claim in rem, is purely academic.

Moreover, the argument advanced by the appellant is unsound.

Judge Swan, in his opinion, said that the *allowance* of the claim is equivalent to a judgment in personam against the debtor, but that the *time and manner of payment* of the claim is in its nature a decree in rem (19 Fed., 2d, 768).

The petitioner misquotes Judge Swan, no doubt unintentionally. He says (Petition, p. 12):

> "* * * the Circuit Court has in its statements approached closely the same state of confusion, since it has in effect stated that the allowance of a claim in these equity proceedings is in its nature a decree in rem, and in the same breath stated that a distinction should be drawn between suits in rem and suits in personam."

As pointed out, Judge Swan held that the allowance of a claim is equivalent to a judgment in personam.

CONCLUSION.

This protracted litigation should be brought to an end.

It has taken Margolies several years to prove a claim against this estate. For years this receiver has administered the assets of the Morosco Holding Company, Inc., and by every technicality and artifice he has contrived to keep Margolies from asserting his claim.

Were he actuated by proper motives and fully alive to the interests of the receivership he would have contested Margolies' claim in the State Court, and would have attempted to recover on his counterclaim of $150,000.

Surely the receiver stood at least as good a chance to defend successfully and to recover on his counterclaim before a judge and jury as he did before a Special Master. Why did he avoid a court and jury so consistently?

Respectfully submitted,

NATHAN BURKAN,
Solicitor for Edward Margolies, Appellee.